In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-1536

FRANK BRUNO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that the statute under which he was convicted, 18 U.S.C. 1511, which makes it a federal crime to conspire to obstruct the enforcement of the criminal laws of a state or political subdivision with the intent to facilitate an illegal gambling business, exceeds the constitutional power of Congress.

Following a jury trial in the United States District Court for the Western District of Pennsylvania, petitioner was convicted of having conspired to obstruct the enforcement of the criminal laws of Pennsylvania, with the intent to facilitate an illegal gambling business, in violation of 18 U.S.C. 1511. He was sentenced to a term of two years' imprisonment. The court of appeals affirmed without opinion (Pet. App. 1a-2a).

The evidence showed that between January 1966 and July 1971, Anthony Grosso headed a large illegal numbers business in the area of Pittsburgh, Pennsylvania (Tr. 25), which utilized 150 agents and between three and five thousand "writers" to handle a daily average of $75,000 in wagers (Tr. 25, 28). In order to protect the operation, Grosso made payments to various law enforcement officials (Tr. 111-114). One of those officials was petitioner, who was both an alderman (magistrate) and deputy sheriff for Allegheny County, Pennsylvania, during this period (Tr. 35). From 1966 to 1969, petitioner received $500 per month from Grosso. Beginning in 1969, the payments were increased to $3,000 per month (Tr. 144-145). From 1966 until petitioner's arrest in 1971, none of the numbers writers in the Grosso organization was arrested by Allegheny County sheriffs or deputy sheriffs (Tr. 40).

Petitioner contends that 18 U.S.C. 1511[1] unconstitutionally intrudes upon the powers reserved to the states by the Tenth Amendment because it regulates a local activity lacking a sufficient nexus with interstate commerce to justify regulation under the Commerce Clause.

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[1] 18 U.S.C. 1511 provides in pertinent part:

Obstruction of State or local law enforcement.

(a) It shall be unlawful for two or more persons to conspire to obstruct the enforcement of the criminal laws of a State or political subdivision thereof, with the intent to facilitate an illegal gambling business if—

It is well established, however, that the Commerce Clause in Article I, Section 8, authorizes Congress to regulate an intra-state activity if there is a rational basis for finding that the regulated activity affects interstate commerce, and if the means employed by Congress to regulate that activity are reasonable and appropriate. *Heart of Atlanta Motel* v. *United States*, 379 U.S. 241, 258-259; *United States* v. *Sacco*, 491 F.2d 995, 999 (C.A. 9); see also *Katzenbach* v. *McClung*, 379 U.S. 294. As petitioner concedes (Pet. 19), illegal gambling businesses may have a significant effect on interstate commerce. See, *e.g.*, *United States* v. *Harris*, 460 F.2d 1041 (C.A. 5), certiorari denied, 409 U.S. 877; *United States* v. *Riehl*, 460 F.2d 454, 458 (C.A. 3). Since, as this Court has recognized, "[c]oncerted action both increases the likelihood that the criminal object will be successfully attained and decreases the probability that the individuals involved will depart from their path of criminality," *Callanan* v. *United States*, 364 U.S. 587, 593, it was reasonable for Congress to conclude that a conspiracy formed "with the intent to facilitate an illegal gambling business"

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(1) one or more of such persons does any act to effect the object of such a conspiracy;

(2) one or more of such persons is an official or employee, elected, appointed, or otherwise, of such State or political subdivision; and

(3) one or more of such persons conducts, finances, manages, supervises, directs, or owns all or part of an illegal gamgling business.

(b) As used in this section—

(1) "illegal gambling business" means a gambling business which—

(i) is a violation of the law of a State or political subdivison in which it is conducted;

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(18 U.S.C. 1511(a)) would succeed, and that it would therefore interfere with interstate commerce. Accordingly, it was appropriate for Congress to regulate illegal gambling businesses by proscribing conspiracies of this sort, and 18 U.S.C. 1511 is a valid exercise of its power under the Commerce Clause. *United States* v. *Riehl, supra; United States* v. *Garrison,* 348 F. Supp. 1112 (E.D. La.).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

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(ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and

(iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of $2,000 in any single day.

(2) "gambling" includes but is not limited to pool-selling, bookmaking, maintaining slot machines, roulette wheels, or dice tables, and conducting lotteries, policy, bolita or numbers games or selling chances therein.

(3) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.